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11

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

12 U'SAGAIN, LLC, a Delaware limited
13 liability company,

14 Plaintiff,

15 v.

16 CITY OF BUENA PARK, a California
17 municipal corporation,

18 Defendant.

19 Case No.: 8:22-cv-839

20

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

21 NOW COMES the Plaintiff, U'SAgain, LLC, and for its Complaint against
22 Defendant, City of Buena Park, California, alleges as follows:

23

PARTIES

24 1. Plaintiff U'SAgain, LLC, (hereinafter "USAgin" or "Plaintiff") is
25 organized as a Delaware limited liability company. USAgin is headquartered in
26 West Chicago, IL. USAgin's registered address in California is 1215 S Allec Street,
27 Anaheim, CA 92805.

1 2. Defendant City of Buena Park (hereinafter “City” or “Defendant”) is a
2 chartered municipal corporation existing under the laws of the State of California,
3 located within Orange County.

JURISDICTION AND VENUE

5 3. This Court has subject matter jurisdiction over this case pursuant to 28
6 USC § 1331, as this action arises under the First and Fourteenth Amendments to the
7 United States Constitution; under 28 USC § 1343(a)(3), in that it is brought to redress
8 constitutional violations and deprivations of law under color of state law, of rights,
9 privileges and immunities secured by the United States Constitution; under 42 USC
10 § 1983, which provides causes of actions for the protection of civil and constitutional
11 rights and damages; and under 42 USC § 1988, to secure costs and reasonable
12 attorney fees as part of the case. This Court has supplemental jurisdiction over
13 Plaintiff's California constitutional claims asserted herein as those claims form part
14 of the same case or controversy as the federal questions asserted herein, pursuant to
15 28 USC § 1337(a).

16 4. The venue in this action is proper within the Central District, Southern
17 Division of California pursuant to 28 USC § 1391(b), in that (i) Plaintiff occupies
18 property within this judicial district; (ii) Defendant is situated within this judicial
19 district; and (iii) all the claims asserted by Plaintiff arose within this judicial district.

NATURE OF ACTION

21 5. This is a civil action wherein USAgain prays for declaratory judgment
22 against Defendant City of Buena Park to prevent the City from acting under color of
23 state law to deprive USAgain of its constitutional rights.

24 6. Through this suit, USAgain prays for injunctive and declaratory relief
25 from this Court, pursuant to 28 USC § 2201, 42 USC § 1983, and the Federal Rules
26 of Civil Procedure, because the City's complete ban on donation bins within its
27 jurisdiction is unconstitutional in that it deprives USAgain of certain rights and

1 privileges guaranteed under the United States and California Constitutions.
2 Specifically, the Buena Park City Code, which consists of the Buena Park Municipal
3 Code (“BPMC”) and the Buena Park Development Code (“BPDC”), does not allow
4 donation bins anywhere within the City and thereby bans the operation of donation
5 bins within the City. However, upon information and belief, the City does not
6 completely prohibit other types of outdoor receptacles to be used and located in the
7 Buena Park. In sum, the City’s ban on donation bins violates USAgain’s rights under
8 the Free Speech and Equal Protection clauses of the United States and California
9 Constitutions.

10 7. Plaintiff concurrently seeks immediate injunctive relief enjoining the
11 City from enforcing its ban on donation bins and from taking any further
12 enforcement action against USAgain’s donation bins within the City.

GENERAL ALLEGATIONS

BACKGROUND

USAgain and its Mission

16 8. Originally founded in 1999 in Seattle Washington, USAgain started
17 with a mission to create a better world where people and planet are given the value
18 and priority they deserve.

19 9. USAgain’s donation bins (also referred to as “Tree Machines” because
20 USAgain arranges for a tree to be planted every time the donation bin is full) provide
21 communities with a convenient and eco-friendly option to rid themselves of excess
22 clothing, which is diverted from landfills. By exporting clothes and shoes to
23 struggling countries USAgain helps improve the well-being of people around the
24 world by putting clothes back in the use cycle, conserving precious natural resources
25 and limiting the emission of greenhouse gases to fight Global Warming and the
26 Climate Crisis.

27 10. In California, USAgain operates as a “commercial coventurer.”

1 11. California defines a “commercial coventurer” as “a person or
 2 organization who, for profit, is primarily engaged in a business other than in
 3 connection with raising funds for charitable purposes. A commercial coventurer
 4 raises money for charities by giving the charity a certain percentage from the sale of
 5 goods or services. A commercial coventurer represents to the public that the
 6 purchase or use of its goods or services will benefit a charitable organization.”

7 12. USAgain promotes and raises funds for charity by giving the charity,
 8 namely Trees for the Future, Inc., a registered 501(c) nonprofit organization, the cost
 9 of planting one tree for every 500 pounds (equivalent to 10 bags or 1 full donation
 10 bin) of clothes and shoes collected.

11 13. USAgain operates donation collection bins (“donation bins” or “bins”)
 12 at various private properties across the country—including on the private property
 13 of various religious worship centers and schools that wish to partner with and
 14 promote the same charitable causes, as well as on mall and gas station parking lots.

15 14. Individuals can donate their used clothes, shoes, and other reusable
 16 textiles at these locations. Examples of USAgain’s bins are shown below.



24 15. USAgain’s donation bins are the medium of expression by which
 25 USAgain silently solicits donated clothes and textiles and promotes the charitable
 26 causes referenced above.

1 16. USAgain's donation bins are placed on private properties to be easily
2 visible and accessible by individuals looking to deposit donations.

3 17. All USAgain's donation bins are clearly marked as belonging to
4 USAgain and contain contact information for anyone to contact USAgain officials
5 for any reason.

6 18. USAgain representatives generally visit each of its donation bins on a
7 daily basis to collect the donated goods and to avoid bin overflow and goods
8 accumulating outside the bins.

9 19. However, if a particular donation bin receives a higher-than-average
10 volume of donations, USAgain representatives will visit and service that bin more
11 frequently.

12 20. If donations begin to accumulate outside a bin before USAgain officials
13 make their daily visit, anyone can contact USAgain using the clearly provided
14 contact information on the bin to inform USAgain of the overflow.

15 21. USAgain is also able to provide 24/7 surveillance by using a camera
16 that notifies USAgain of movement detected outside of the drop spot and allows
17 USAgain to see if there is an overflow even before being reported by patrons.

18 22. If USAgain receives a complaint about an overflowing or otherwise
19 unsightly donation bin, its representatives are usually able to respond to the site and
20 resolve the issue within 12 to 24 hours.

21 23. Before placing its donation bins at any location, USAgain officials
22 contact the property owner or manager and obtain permission to place the bins at a
23 particular private property.

24 24. USAgain's general practice is to execute a written agreement between
25 itself and the property owner or business manager of each site where USAgain places
26 a bin. The agreement includes the address of where the donation bin is placed, the
27 name and title of the person who gave permission for USAgain to place its bin at

1 that site, information regarding USAgain's commitment to maintaining the bin and
2 keep its immediate vicinity clean, and a photograph of where the particular bin is
3 located at that site.

4 ***USAgain's Donation Bins in the City of Buena Park***

5 25. Since 2012, USAgain has placed donation bins at various locations
6 throughout the City of Buena Park.

7 26. Over the years, USAgain has placed a total of fourteen donation bins
8 throughout the City.

9 27. In or about February 2022, the City of Buena Park, via Code
10 Enforcement Officer Ernestine Zapien, instructed USAgain to remove its bin located
11 at 41962 Buena Park Place in Buena Park, CA.

12 28. In a letter dated February 4, 2022, counsel for USAgain wrote the City,
13 with a copy e-mailed to City Attorney Christopher Cardinale, to inform the City of
14 the constitutional rights that are implicated with donation bins. **Exhibit A**, citing
15 among other cases *Planet Aid v. City of St. Johns, MI*, 782 F.3d 319, 325-26 (6th
16 Cir. 2015) ("a charitable donation bin can—and does—"speak.") and *Recycle for
17 Change v. City of Oakland*, 856 F.3d 666 (9th Cir. 2016) (upholding a municipal
18 ordinance that regulated but did not completely ban donation bins).

19 29. In the same letter, counsel for USAgain informed that City that upon
20 review of the BPMC, the BPMC does not appear to make any provision for
21 unattended donation bins within the City and asked the City to advise otherwise if
22 USAgain's review was mistaken.

23 30. Code Enforcement Officer Zapien confirmed receipt of USAgain's
24 letter on February 7, 2022, and indicated that she would be forwarding it on to her
25 Supervisor for further discussion and response.

26 31. Without providing USAgain any further response, the City issued a
27 letter dated February 24, 2022, requiring the removal of USAgain's donation bin

1 located at 8379 La Palma, Buena Park, CA.

2 32. On March 7, 2022, counsel for USAgain e-mailed the City again asking
3 for a response to USAgain's letter dated February 7, 2022, and to confirm whether
4 it is Buena Park's position that donation drop spots or drop boxes are not allowed in
5 any parking lots in Buena Park.

6 ***Exhaustion of Administrative Remedies***

7 33. On March 11, 2022, Buena Park's Code Enforcement Supervisor,
8 Mario Camacho, instructed USAgain that it needed to ask the City's Planning
9 Department where, if anywhere, Buena Park permits donation bins within its
10 jurisdiction.

11 34. On March 14, 2022, USAgain submitted an online application to the
12 Planning Department via Buena Park's Citizen Services Portal asking where, if
13 anywhere, Buena Park permits donation bins within its jurisdiction.

14 35. According to Buena Park's website, the Planning Division "is
15 responsible for the administration of the General Plan and implementation of the
16 Zoning Ordinance and Specific Plans."

17 36. On March 25, 2022, Monica Martin, the Senior Planner of the City of
18 Buena Park's Planning Division, confirmed in writing that "the City does not allow
19 outdoor clothing donation bins." March 25, 2022, *E-mail from City Senior Planner*
20 *Monica Martin attached as Exhibit B.*

21 37. On March 28, 2022, the City issued a letter designated its "Final
22 Notice" requiring the removal of USAgain's donation bin located at 8379 La Palma,
23 Buena Park, CA. The letter also says to "***correct the noted violation(s) by April 18,***
2022" and that "***Failure to correct these outstanding violations could result in legal***
action under the provisions of the Buena Park Municipal Code, which may
include issuance of an Administrative Citation with fines ranging from \$100 to
\$500." (Emphasis in original.)

1 38. As a result of the City's failure to allow donation bins anywhere in the
2 City and enforcement of its city-wide ban on donation bins, USAgain is entirely
3 barred from locating any donation bins within the City for the purpose of soliciting
4 donated clothing.

FIRST CAUSE OF ACTION

Violation of the United States Constitution Free Speech Clause: First and Fourteenth Amendments

8 39. Plaintiff incorporates by this reference the allegations of paragraphs 1
9 through 38, inclusive, as though fully set forth herein.

40. The Buena Park City Code is a compilation of the City's ordinances.

11 41. The Buena Park City Code is organized into two parts: Part I is known
12 as the “Buena Park Municipal Code” and consists of Titles 1 through 13, and Part II
13 is known as the “Buena Park Development Code” and consists of Titles 14 through
14 20.

15 42. The Zoning Ordinance is Title 19 of the Buena Park City Code and
16 governs the “uses” that are permitted or prohibited within Buena Park.

17 43. The Zoning Ordinance defines "use" as "the type of activity or
18 occupancy occurring or intended to occur at a given location." 19.104.080
19 Definitions.

20 44. The Buena Park Zoning Map divides Buena Park into different zones
21 which allow or prohibit different uses. 19.104.060

22 45. For each zone, the Zoning Ordinance provides a table which identifies
23 what uses are permitted within that zone.

24 46. Land uses that are identified in a table with a "P" are an automatically
25 permitted use.

26 47. Land uses that are identified in a table with an "I" are an incidental
27 use—"use permitted only if incidental to another primary use on the same site. If

1 incidental to a use authorized by conditional use permit, such incidental use is
2 permitted only if included within the terms of the conditional use permit.”

3 48. Land uses that are identified in a table with a “C” are a conditional
4 use—“use eligible for consideration under the conditional use procedure (Section
5 19.128.020) and permitted only if a conditional use permit is approved, subject to
6 the specific conditions of such permit.”

7 49. Land uses that are identified in a table with a “Ci” are an incidental
8 conditional use—“use eligible for consideration under the conditional use procedure
9 only if incidental to another primary use of the site, whether such primary use is
10 automatically permitted or permitted by conditional use permit.”

11 50. Land uses that are identified in a table with an “IC” are an incidental or
12 conditional use—“automatically permitted as an incidental use, when the primary
13 use is automatically permitted, or eligible for consideration as a primary use under
14 the conditional use procedure.”

15 51. Land uses that are identified in a table with a “T” are a “temporary
16 use”—permitted if approved in accordance with Title 19, Division 10, which defines
17 a temporary use as “an activity of less than thirty days duration.

18 52. Land, buildings, and other facilities can only be used for those activities
19 indicated in the tables for the various zones. *See, e.g.* Table 19.312.010, entitled Uses
20 Permitted.

21 53. The Zoning Ordinance does not list clothing donation bins as an
22 allowed use (either as “P”, “I”, “C”, “Ci”, “IC”, or “T”) in any zone within Buena
23 Park and therefore prohibits clothing donation bins throughout the City’s
24 jurisdiction.

25 54. USAgain’s donation bins do not qualify as a temporary use as they are
26 not an activity of less than thirty days duration.
27

1 55. As a result, and as confirmed by the City’s senior planner on March 25,
2 2022, the City “does not allow outdoor clothing donation bins.”

3 56. The City’s complete ban on donation bins violates the United States
4 Constitution on its face and as applied to USAgain.

5 57. The solicitation of charitable donations such as clothing, shoes, and
6 other textiles is a form of speech fully protected by the First Amendment to the
7 United States Constitution.

8 58. USAgain has a constitutional right to engage in this protected speech
9 and may not be prohibited from exercising this right unless Defendant can prove that
10 its restriction on Plaintiff’s speech does not burden substantially more speech than
11 necessary and is narrowly tailored to further a substantial state interest.

12 59. At all times alleged herein, Defendant has been and will continue to be
13 acting under the color of state law and engaging in state action.

14 60. Constitutionally protected activities may not be directly and
15 substantially limited, diminished, prohibited, or chilled by state actions, including
16 the actions of local governments such as Defendant, acting under the color of state
17 law.

18 61. Buena Park’s ban on donation bins in the City directly, indirectly, and
19 substantially limits USAgain, as well as a number of other entities, from engaging
20 in constitutionally protected speech and expressive activity.

21 62. Buena Park’s ban on donation bins prohibits USAgain, as well as other
22 similarly situated organizations, from engaging in protected speech and expressive
23 activity in the City simply because these organizations utilize donation bins as a
24 means of effectuating their right to free speech and promoting their messages.

25 63. Buena Park’s complete ban on donation bins is not supported by any
26 legitimate state interests, nor is the Ordinance narrowly tailored to further said
27

1 interests, since the Buena Park's interests can all be attained without completely
2 prohibiting constitutionally protected activities.

3 64. Upon information and belief, Buena Park regulates, but does not ban,
4 other outdoor receptacles that are similar to donation bins and only differ in that they
5 do not solicit donations.

6 65. Buena Park's ban on donation bins, therefore, constitutes a content-
7 based restriction on speech, and completely extinguishes USAgain's ability to carry
8 out its free speech rights by soliciting donations through its donation bins. By
9 silencing USAgain's speech activity in its entirety, Defendant has impermissibly
10 restrained the content of USAgain's speech.

11 66. USAgain is suffering and will continue to suffer irreparable harm by
12 the City's enforcement of its ban on donation bins. Unless enjoined and made
13 subject to a declaration of USAgain's legal rights by this Court, Buena Park will
14 continue to violate USAgain's rights to solicit donations through its donation bins.

15 67. USAgain also suffers monetary damages as a result of a ban on
16 donation bins.

SECOND CAUSE OF ACTION

California Constitution

Freedom of Speech: Article 1, Section 2

20 68. Plaintiff incorporates by this reference the allegations of paragraphs 1
21 through 66, inclusive, as though fully set forth herein.

22 69. Under Article 1, Section 2 of the California Constitution, “[a] law may
23 not restrain or abridge liberty of speech or press.”

24 70. Defendant has deprived and continues to deprive Plaintiff of its right to
25 freedom of speech by adopting and enforcing a ban on donation bins, which bars
26 USAgain from operating donation bins in the City, in violation of Article 1, Section
27 2 of the California Constitution. Unless enjoined and made subject to a declaration

1 of USAgain's legal rights by this Court, Buena Park will continue to violate
2 USAgain's rights to solicit charitable donations at its donation bins.

3 **THIRD CAUSE OF ACTION**

4 **Violation of the United States Constitution**

5 **Equal Protection Clause: Fourteenth Amendment**

6 **42 USC § 1983**

7 71. Plaintiff incorporates by this reference the allegations of paragraphs 1
8 through 69, inclusive, as though fully set forth herein.

9 72. The Equal Protection Clause prohibits discrimination by a
10 governmental entity that burdens a fundamental right.

11 73. The right to freedom of speech is a fundamental right.

12 74. Zoning ordinances and municipal codes that affect fundamental rights
13 are subject to strict scrutiny.

14 75. Buena Park imposes and enforces a blanket prohibition barring
15 organizations from operating clothing donation bins in the City. Unless enjoined and
16 made subject to a declaration of USAgain's legal rights by this Court, Buena Park
17 will continue to violate USAgain's rights to solicit donations through its donation
18 bins.

19 76. The City's asserted interests are not "compelling" for purposes of a
20 constitutional analysis.

21 77. Furthermore, the City's ban on donation bins is not narrowly tailored
22 to achieve the City's alleged interests.

23 78. The City's disparate treatment of donation bins bears no rational
24 relationship to any compelling state interests. Any interest, such as public safety,
25 nuisance abatement or protecting property values, which compels the prohibition of
26 donation bins in the City, must apply equally to all similarly situated receptacles.

27 79. Buena Park's ban on donation bins fails strict scrutiny review.

FOURTH CAUSE OF ACTION

Violation of the California Constitution

Equal Protection: Article 1, Section 7

80. Plaintiff incorporates by this reference the allegations of paragraphs 1 through 78, inclusive, as though fully set forth herein.

81. Article 1, Section 7 of the California Constitution guarantees equal protection of the laws to all person.

82. Defendant has deprived and continues to deprive Plaintiff of its right to equal protection of the laws by barring USAgain from operating donation bins in the City, while, upon information and belief, permitting non-soliciting, outdoor receptacles to operate in the City, in violation of Article 1, Section 7 of the California Constitution.

PRAYER FOR RELIEF

WHEREFORE, USAgain respectfully requests a judgment against Defendant City of Buena Park on each and every count alleged herein as follows:

1. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declaration shall have the force and effect of final judgment and that the Court retains jurisdiction of this matter for the purpose of enforcing the Court's Order;
2. Pursuant to 28 USC § 2201, declare that the City's failure to allow donation bins anywhere within its jurisdiction is in violation of the First and Fourteenth Amendments to the United States Constitution, and further declare that Plaintiff must be allowed to operate donation bins in the City as a means of exercising its constitutional right to solicit donated clothes and promote its charitable causes;
3. Pursuant to 28 USC § 2202, Fed. R. Civ. P. 64, 42 USC § 1983,

1 and 42 USC § 2000cc-4, permanently enjoin Defendant from
2 enforcing its Ordinance to the extent that it prevents USAgain
from operating donation bins in the City;

3

4 4. Pursuant to 28 USC § 2202 and Fed. R. Civ. P. 64, award Plaintiff
compensatory and nominal damages;

5

6 5. Pursuant to 28 USC § 2202, Fed. R. Civ. P. 65, 42 USC § 1983,
and 42 USC § 1988, award Plaintiff all necessary and appropriate
equitable relief;

7

8 6. Pursuant to 42 USC § 1988, Fed. R. Civ. P. 54(d), California
9 GOVERNMENT CODE §800, and other applicable law, award
Plaintiff its reasonable attorney fees and costs; and

10

11 7. Grant such other and further relief, injunctive or otherwise, as the
Court deems equitable, just and proper.

12

13 Respectfully Submitted,

14
15 BUSCEMI HALLETT LLP

16 By: /s/ David E. Hallett
17 DAVID E. HALLETT
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18 BRANDON J. VEGTER
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20
21 Attorneys for Plaintiff
22 U'SAGAIN, LLC

VERIFICATION

I am the Chief Executive Officer of Plaintiff USA. Again in the above-entitled action and am authorized to make this Verification on its behalf. I have read paragraphs 1, 8-10, 12-38, 54, 55, 61, 62, 66 of the Verified Complaint and know the contents thereof. I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed on April 20, 2022, at Costa Mesa, California.

U'SAgain, LLC by: Mattias Wallander
Its: Chief Executive Officer

Exhibit A



33 North LaSalle • Suite 3350 • Chicago, Illinois • 60602 P: 312-235-6858
401 West State Street • Suite 509 • Rockford, Illinois • 61101 P: 312-235-6858

February 4, 2022

Ms. Ernestine Zapien
Code Enforcement Officer
City of Buena Park
6650 Beach Blvd.
Buena Park, CA 90622-5009

Via email only to
ezapien@buenapark.com

Re: USAgain Charitable Donation Boxes in Buena Park, CA

Dear Officer Zapien:

Please be advised that we represent USAgain, a professional fundraiser that operates clothing donation bins in many locations across California and the country. Our client has informed us that you recently instructed USAgain to remove its bin located at 41962 Buena Park Place and indicated that USAgain must apply for a Temporary Use Permit to place a bin at that location.

Under 19.1004.020(A) of the Buena Park Municipal Code (“BPMC”), a “temporary use” is defined as “an activity of less than thirty days in duration.” Please be advised that USAgain’s donation bin does not constitute a temporary use because it is not an activity of less than thirty days duration. Moreover, our review of the BPMC indicates that Buena Park does not make any provision for unattended donation bins within the City. If we are mistaken on this point, please advise.

We also write to inform the City that USAgain’s constitutional rights are implicated by efforts to ban, or impose unlawful prior restraints upon, the placement of their unattended donation bins. The United States Supreme Court has long held that solicitation of charitable donations is a form of speech protected by the First Amendment. *Vill. of Schaumburg v. Citizens for Better Env’t*, 444 U.S. 620, 633 (1980) (“[c]haritable appeals for funds, on the street or door to door, involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.”); *see also Int’l Soc’y for Krishna Consciousness v. Lee*, 505 U.S. 672, 677 (1992). Charitable solicitations are “so intertwined with speech that they are entitled to the protections of the First Amendment.” *Sec’y of State of Md. v. Munson Co., Inc.*, 467 U.S. 947, 959 (1983).

In 2011, the Fifth Circuit Court of Appeals held that an ordinance that regulates charitable solicitation through unattended donation bins is subject to strict scrutiny. *Nat’l Fed’n of Blind of Tex., Inc. v. Abbott*, 647 F.3d 202 (5th Cir. 2011). As the court explained, “public receptacles are not mere collection points for unwanted items, but are rather silent solicitors and advocates for particular charitable causes.” *Id.* at 213. In 2015, the Sixth Circuit Court of Appeals directly

addressed the free speech principles implicated by unattended donation bins. *Planet Aid v. City of St. Johns, MI*, 782 F.3d 318, 325-26 (6th Cir. 2015). As the Sixth Circuit explained,

A charitable donation bin can—and does—“speak[.]” A passer-by who sees a donation bin may be motivated by it to research the charity to decide if he wants to donate—in so doing, the passer-by will gain new information about the social problem the charity seeks to remedy. Indeed, the donation bin may ultimately motivate citizens to donate clothing or shoes even if they had not previously considered doing so. The speech may not be unidirectional, either—a citizen faced with a choice among several bins from different charities may be inspired to learn more about each charity’s mission in deciding which charity is consistent with his values, thus influencing his donation decision. In this way, donation bins in many respects mirror the passive speaker on the side of the road, holding a sign drawing attention to his cause.

Here, USAgain operates unattended donation bins in order to collect donated textiles, which it in turn sells and then uses the proceeds, in part, to publicize its views and advocate for numerous charitable causes; namely, Trees for the Future in Africa. This activity is clearly protected by the First Amendment. *Schaumburg*, 444 U.S. at 633; *Planet Aid*, 782 F.3d at 324. Therefore, USAgain’s operation of unattended donation bins in order to solicit and collect charitable donations constitutes speech that is protected by the First Amendment.

Under strict scrutiny, the government may restrict speech to “serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms.” *Schaumburg*, 444 U.S. at 637; *Riley v. Nat'l Fed'n of Blind of N. Carolina, Inc.*, 487 U.S. 781, 788 (1988). As discussed by the Sixth Circuit in *Planet Aid*, a complete ban on unattended donation boxes is a content-based restriction of free speech subject to strict scrutiny. A law that is subject to strict scrutiny is presumed invalid by courts. In other words, a ban of donation bins, or a de facto ban as the case may be, violates the First Amendment and will be struck down. Similar cases have been brought in district courts in Illinois, Indiana, Michigan, Nebraska, and Texas, and they have all come to similar conclusions.

A ban on donation bins would fail strict scrutiny, because it would not be narrowly tailored to further the City’s interests and is not the least restrictive means of furthering such interests. “A statute is narrowly tailored if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.” *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). While regulating charitable solicitation is permissible, it “must be done with narrow specificity.” *Schaumburg*, 444 U.S. at 627. “Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone[.]” *Id.* at 637 (internal citations omitted).

Moreover, when a zoning scheme operates as a system of prior restraint on First Amendment protected activity, there is a heavy presumption against its constitutionality. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225 (1990); *see also Blue Moon Ent., LLC v. City of Bates City, Mo.*, 441 F.3d 561, 565 (8th Cir. 2006) (upholding facial challenge to a CUP requirement for a First Amendment protected use as a prior restraint). Here, if the City insists on treating

USAgin's donation bins as a "temporary use," even though it is not an activity of less than thirty days duration, the City will be imposing a prior restraint USAgin's speech. Under 19.1004.030, an "temporary use" applicant must submit an application at least 30 days prior to the intended activity and pay an undisclosed fee. Moreover, 19.1004.05 provides that the "Director shall have the right to refuse such permit if he or she determines that the granting of same or the conduct of the use will be contrary to the preservation of the public peace, health, safety, or welfare of the City or its inhabitants." This language provides the Director nearly unfettered discretion and lacks the narrow, definite, and objective standards required for prior restraints on speech. *See also*, Shelley Ross Saxon, Zoning Away First Amendment Rights, 53 Wash. U. J. Urb. & Contemp. L. 1, 34 (1998). Such a permitting scheme is not narrowly designed to address the possible secondary effects of donation bins or allow for their prompt placement, *see, e.g. Recycle for Change v. City of Oakland*, 856 F.3d 666 (9th Cir. 2016).

My client understands and agrees with the municipal interest in securing a clean and well-maintained community. This is why USAgin is committed to supporting reasonable, constitutional regulation of unattended donation boxes. To that end, we have worked with many communities throughout the United States in the past to arrive at mutually beneficial and commonsense solutions to these issues. That is my client's desire in this instance. However, if the City is unwilling to work with us to secure our client's ability to operate its unattended donation boxes in Buena Park, we are prepared to defend its constitutional rights.

We respectfully ask the City to refrain from taking any further enforcement action related to the bin located at 41962 Buena Park Place or any other of USAgin's donation bins in Buena Park. If I have in any way overlooked or misread any applicable municipal ordinances, please let me know. If you or the City Attorney should have any further questions or concerns regarding this matter, I may be reached at (815) 986-8050 or nsterett@daltontomich.com. We would be happy to discuss how we can work together to put in place practical regulations for unattended donation bins in Buena Park that reflect the constitutional principles highlighted above. We look forward to the City's response.

Sincerely,
DALTON & TOMICH PLC



Noel W. Sterett

cc: Client
City Attorney Christopher Cardinale at CCardinale@agclawfirm.com

Exhibit B

From: City of Buena Park, CA <noreply@viewpointcloud.com>

Date: Friday, March 25, 2022 at 4:35 PM

To: Noel Sterett <nsterett@daltontomich.com>

Subject: Monica Martin commented on Inquiry Research for On-line Planning & Zoning Questions #PZ-22-138



City of Buena Park, CA

Monica Martin commented on Inquiry Research for On-line Planning & Zoning Questions
#PZ-22-138

"Hi Noel,

The City does not allow outdoor clothing donation bins. "

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